

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOYCE SIMONS, individually and as the
personal representative of THE ESTATE OF
RONALD SIMONS,

Plaintiff,

v.

CENVEO CORPORATION, a Connecticut
Company,

Defendant.

No.

NOTICE OF REMOVAL OF CIVIL
ACTION UNDER 28 U.S.C. §1441

[King County Superior Court Cause No.
15-2-22381-0 KNT]

TO: The Honorable Judges of the United States District Court for the Western District of
Washington, at Seattle:

Pursuant to 28 U.S.C. § 1441 *et seq.*, Defendant Cenveo Corporation (“Cenveo” or
“Defendant”) hereby removes the above-captioned action from the Superior Court of
Washington for King County to this Court on the grounds of original jurisdiction based on
federal question. The following statement is submitted in accordance with 28 U.S.C. § 1446:

1. On September 14, 2015, Plaintiff Joyce Simons (“Plaintiff”) commenced this
action against Defendant in the Superior Court of Washington for King County (now pending as

NOTICE OF REMOVAL OF CIVIL ACTION UNDER 28
U.S.C. §1441
(DIVERSITY) - 1

51474856.1

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

1 Case No. 15-2-22381-0 KNT). A true and correct copy of the Summons and Complaint are
 2 attached hereto as Exhibit A.

3 2. Plaintiff served the Summons and Complaint on Cenveo on September 17, 2015,
 4 by and through the Corporation Service Company (“CSC”). The CSC’s Notice of Service of
 5 Process is attached hereto as Exhibit B.
 6

7 3. Plaintiff’s Complaint (“Complaint”) alleges that Plaintiff, through the
 8 employment of her late husband, Ronald Simons (“Simons”), with Defendant, was a beneficiary
 9 under the terms of the Cenveo Corporation Group Basic Life Insurance Plan (the “Plan”). (*See*
 10 Complaint, ¶ VI, VII, VIII). The Plan is an “employee welfare benefit plan” as that term is
 11 defined under the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §
 12 1001, *et. seq.*
 13

14 4. Plaintiff seeks a monetary award consisting of the life insurance benefits allegedly
 15 payable under the terms of the Plan. (Complaint ¶ XIII). Accordingly, Plaintiff’s claim falls
 16 within the civil enforcement provisions set forth in ERISA § 502(a), 29 U.S.C. § 1132(a)¹; *see*
 17 *also* 29 U.S.C. § 1132(e)(1) (addressing ERISA jurisdiction). This Court has original
 18 jurisdiction over federal questions pursuant to the provisions of 28 U.S.C. § 1331 (“The district
 19 courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or
 20 treaties of the United States”).
 21
 22

23 ¹ ERISA’s civil enforcement provision, § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B) provides:
 24 A civil action may be brought
 25 (1) by a participant or beneficiary...

26 (B) to recover benefits due to him under the terms of the plan, to enforce his
 rights under the terms of the plan, or to clarify his rights to future benefits
 under the terms of the plan;...

5. A defendant may remove a case on grounds that the plaintiff has asserted a claim for life insurance benefits which is completely preempted by section 514(a) of ERISA, 29 U.S.C. § 1144(a). *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 63-67 (1987). Section 514(a) is “clearly expansive” and designed to establish benefit plan regulation as “exclusively a federal concern.” *Egelhoff v. Egelhoff*, 532 U.S. 141 (2001); *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655 (1995); *Epps v. NCNB Texas*, 7 F.3d 44, 45 (5th Cir. 1993).

Civil claims preempted by ERISA, and redressable under 29 U.S.C. § 1132(a), provide federal question jurisdiction because Congress has “so completely” preempted this area “that any civil complaint raising [section 1132(a)] claims is necessarily federal in character.”

Nishimoto v. Federman-Bachrach & Assoc., 903 F.2d 709, 713 (9th Cir. 1990) (quoting *Taylor*, 481 U.S. at 63-64). When a court must refer to an ERISA plan to determine the plaintiff’s eligibility for benefits or other rights under the ERISA plan and compute the damages claimed, the case “relates to” an ERISA plan, and is removable to federal court. *Epps*, 7 F.3d at 45; *see also Nishimoto*, 903 F.2d at 713-14. “State law claims, regardless of how they are pleaded, are preempted if they “relate to” an ERISA plan.” *Epps*, 7 F.3d at 45.

6. In this case, Plaintiff’s action “relates to” an ERISA plan, and is removable to this Court. Plaintiff is seeking relief as a beneficiary entitled to life insurance benefits under the Plan, and the Court will have to refer to the terms of the Plan to determine whether Plaintiff is entitled to benefits. *See Epps*, 7 F.3d at 45; *Nishimoto*, 903 F.2d at 713-14; *see also Brown v. Southwestern Bell Telephone Co.*, 901 F.2d 1250 (5th Cir. 1990). The fact that Plaintiff did not

1 specifically invoke ERISA in her Complaint or refer to the Plan as an employee welfare benefit
2 plan covered by ERISA does not bar removal. *Epps*, 7 F.3d at 45.

3 7. Accordingly, Plaintiff's action is a civil action raising a federal question which
4 may be removed to this Court pursuant to the provisions of 28 U.S.C. §§ 1441 and 1446.
5 *Nishimoto*, 903 F.2d at 713-14; *Epps*, 7 F.3d at 45.

6
7 9. Removal Is Timely. This Notice of Removal is timely filed within thirty (30)
8 days from the date on which the action was served on Defendant, pursuant to 28 U.S.C. §
9 1446(b).

10 10. Removal to This Court Is Proper. This Court is the United States District Court
11 for the district and division within which Plaintiff's action, Case No. 15-2-22381-0 KNT is
12 pending. *See* 28 U.S.C. § 1441(a).

13
14 11. Signature. This Notice of Removal is signed pursuant to Fed. R. Civ. P. 11. *See*
15 28 U.S.C. § 1446(a).

16 12. Pleadings and Process. True and correct copies of the pleadings on file in the
17 State Court Action, including a current docket sheet, are attached hereto as Exhibit C. *See* 28
18 U.S.C. § 1446(a). Defendant has paid the appropriate filing fee to the Clerk of this Court upon
19 the filing of this Notice.

20 13. Notice. Defendant will promptly serve Plaintiff and file with this Court its Notice
21 of Removal to Plaintiff, informing Plaintiff that this matter has been removed to federal court.
22 *See* 28 U.S.C. § 1446(a), (d). Defendant will promptly file with the Clerk of the Superior Court
23 of Washington, County of King, and serve on Plaintiff, a Notice to Clerk of Removal to Federal
24 Court, pursuant to 28 U.S.C. § 1446(d). A copy of the same is attached hereto as Exhibit D.
25
26

1 Therefore, Defendant gives notice that Case No. 15-2-22381-0 KNT now pending against
2 it in the Superior Court of King County has been removed therefrom to this Court.

3 Dated this 7th day of October, 2015.
4

5 s/ Bradley P. Thoreson

6 Bradley P. Thoreson, WSBA #18190

7 FOSTER PEPPER PLLC

8 1111 Third Avenue, Suite 3400

9 Seattle, Washington 98101-3299

Telephone: (206) 447-4400

Facsimile: (206) 447-9700

Email: thorb@foster.com

Attorneys for Defendant Cenveo Corporation
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that on the 7th day of October, 2015, the foregoing document was electronically filed through the CM/ECF system, and counsel for plaintiff by e-mail and U.S. mail at the following address:

Daniel C. Heath, WSBA #49051
Attorney for Plaintiff
Jacobs & Jacobs
114 E. Meeker
Puyallup, WA 98371
253-845-0577
FAX: 253-845-9060
Email: dheath@jacobsandjacobs.net

Dated this 7th day of October, 2015.

s/ Bradley P. Thoreson
Bradley P. Thoreson